



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TE/GE EO EXAMINATIONS
1100 COMMERCE ST. MAIL STOP 4920 DAL
DALLAS, TEXAS 75242

501.03-00

Date: December 6, 2010

Release Number: 201109028

Release date: 3/4/11

LEGEND

ORG = Organization name

XX = Date Address = address

Taxpayer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

CERTIFIED MAIL

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated December 27, 19XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective August 31, 20XX.

Our adverse determination was made for the following reasons:

You have failed to operate exclusively for one or more exempt purposes as required by I.R.C. §501(c)(3). You have not demonstrated that you engage primarily in activities that further an exempt purpose under §501(c)(3). You have failed to demonstrate that you serve a public rather than a private interest.

Contributions to your organization are no longer deductible under IRC §170 after August 31, 20XX

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending December 31, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed before the 91st day after the date this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules and the appropriate forms regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts

where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the courts at the following addresses:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Douglas H. Shulman
Commissioner
By

Nanette M. Downing
Director, EO Examinations

Enclosures:

Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*
Form 6018, *Consent to Proposed Action - Section 7428*
Return envelope



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE EO Examinations

107 Charles Lindbergh Blvd.

Garden City, NY 11530

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: October 1, 2010

LEGEND

ORG = Organization name

XX = Date Address = address

ORG

ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

We propose to revoke our recognition of your exempt status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). We enclose our report of examination explaining why we are proposing this action.

If you accept our proposal, please sign and return the enclosed Form 6018, Consent to Proposed Action – Section 7428, unless you have already provided us a signed Form 6018. We will issue a final revocation letter determining you are not an organization described in section 501(c)(3). After the issuance of the final revocation letter we will publish an announcement that you have been deleted from the cumulative list of organizations contributions to which are deductible under section 170 of the Code. If you do not respond to this proposal, we will similarly issue a final revocation letter. Failing to respond to this proposal may adversely impact your legal standing to seek a declaratory judgment because you may be deemed to have failed to exhaust administrative remedies.

If you do not agree with our proposed revocation and wish to protest our proposed revocation to the Appeals Office of the Internal Revenue Service, then you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. This written request is called a protest. For your protest to be valid it needs to contain certain specific information which generally includes a statement of the facts, the applicable law, and arguments in support of your position. For the specific information needed for a valid protest, please refer to page 6 of the enclosed Publication 3498, *The Examination Process*, and page 2 of the enclosed Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*. These documents also explain how to appeal an IRS proposed action.

If you do submit a valid protest, then an Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498 and Publication 892 explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes

information on your rights as a taxpayer and the IRS collection process. Please note that Fast Tract Mediation Services referred to in Publication 3498, generally do not apply after issuance of this letter.

You may also request that we refer this matter for Technical Advice as explained in Publication 892 and an annual revenue procedure. Please contact the individual identified on the first page of this letter if you are considering requesting Technical Advice. If we issue a determination letter to you based on a Technical Advice Memorandum issued by the EO Rulings and Agreements function, then no further administrative appeal will be available to you within the IRS on the matter.

If you agreed with the proposed revocation or if you receive a final revocation letter, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 30 days of the date you agreed with the revocation or the date of your final revocation letter, whichever is sooner, unless a request for extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

We will notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code. Currently, only certain states are eligible to receive notification of proposed revocation actions. You can call the person at the heading of this letter to find out if your State is eligible to receive a notice of revocation of your tax-exempt status.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance.

If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination
Form(s) 6018
Return Envelope

ORG
EIN: EIN

LEGEND

ORG = Organization name XX = Date State = state CO_1 =
1st COMPANY

ISSUE

Whether the ORG (“ORG”) is organized and operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3).

FACTS

Background and History:

The ORG is currently exempt under Internal Revenue Code (IRC) section 501(c)(3) and is classified as a hospital. It is seeking to change its exempt status to a VEBA described in section 501(c)(9).

The ORG owns and operates four ambulatory health centers. Through its employee health care providers, it provides medical care for union members and their dependents as a benefit to them. Its sole member is the CO-1 (“CO-1”), which was established by collective bargaining as a VEBA described in Internal Revenue Code (IRC) section 501(c)(9). The ORG is funded solely by the CO-1, which is funded by the employer members of the trade association.

The ORG maintains that it has never operated for charitable purposes; rather solely for its Union members and it has never derived any benefit from its status as a 501(c)(3) organization. The ORG has never received charitable contributions; all funds have come from the CO-1.

The ORG was incorporated by Special Act of the State Legislature on April 13, 19XX as a corporation to be governed by the Membership Corporations Law, the objects and purposes being to deliver certain group medical benefits funded by employer contributions made pursuant to an industry-wide collective bargaining agreement between the State Hotel Trades Council (a labor organization affiliated with the American Federation of Labor) and the Hotel Association of State City, Inc. (a membership corporation composed of hotels in the city of State). In 19XX the IRS classified the ORG as a tax-exempt “social welfare” organization under section 501(c)(4) of the Code.

On August 9, 19XX, the ORG’s Certificate of Incorporation was amended by the State Legislature to denominate the ORG as a Not-For-Profit corporation (in recognition of the fact that the Membership Corporations Law had been replaced by the Not-For-Profit Corporation Law) and to expressly state that the ORG would be a public health charity under section 501(c)(3) of the Code, subject to state regulation under Article 28 of the State Public Health Law. The amendments to the ORG’s Certificate of Incorporation expanded the treatable population beyond Trades Council membership to include members of the general public,

ORG
EIN: EIN

regardless of their ability to pay, charity cases and disadvantaged State City school children and required that, upon the ORG's dissolution, its remaining assets be transferred to a similar IRC section 501(c)(3) charity. On December 27, 19XX the IRS issued a new determination letter recognizing the ORG as tax exempt under IRC section 501(c)(3).

In 19XX, the Board of Directors of the ORG attempted to amend its Certificate of Incorporation to remove charitable language to prevent ERISA problems. In 19XX, the ORG also filed Form 1024 requesting exemption under IRC section 501(c)(9), but the request was withdrawn in 19XX.

On August 24, 20XX the State Court approved the ORG's amended Certificate of Incorporation to remove charitable language and change the corporate purpose from a charity to an employee benefit organization. Note, as a C corporation in State, organizations seeking to amend organizational documents go through a judicial process. The State Attorney General's office was also contacted regarding the amendments to the ORG's organizational documents, they did not object to any proposed changes.

On August 31, 20XX the Certificate of Amendment was filed with State amending the ORG's Certificate of Incorporation to remove all charitable language and repurpose the organization from a charity to an employee benefit organization.

On September 27, 20XX the ORG submitted Form 1024 application under IRC section 501(c)(9) to the IRS.

LAW

Section 501(c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(d)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or

his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term “charitable” is used in section 501(c)(3) of the Code in its generally accepted legal sense, and includes the promotion of health.

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. *Better Bus. Bureau v. United States*, 326 U.S. 279, 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); *Am. Campaign Acad. V. Commissioner*, 92 T.C. 1053, 1065 (1989); see also *Old Dominion Box. Co., Inc. v. United States*, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973) (“operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose”). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. *Am. Campaign Acad. v. Commissioner*, supra at 1065-1066, and *John Marshall Law School v. United States*, 228 Ct. Cl. 902 (1981).

TAXPAYER’S POSITION

The taxpayer has agreed to revocation of their tax exempt status under IRC section 501(c)(3) and has agreed to sign Form 6018.

GOVERNMENT’S POSITION

We propose revocation of the organization’s exempt status under IRC section 501(c)(3) based on the “organizational” and “operational” issues revealed during the course of our examination. Regulations 1.501(c)(3)-1(d)(ii) states “an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.” The exempt organization’s records show it never operated for charitable purposes; rather solely for its Union members.

On August 31, 20XX the organization amended their Certificate of Incorporation to remove all charitable language and change the organization’s purposes as follows: “The Corporation is organized and operated exclusively as a voluntary employees’ beneficiary association within the meaning of Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the “Code”). The Beneficiaries are the “members” of the Corporation for purposes of all references to “members” in Code Section 501(c)(9) and the regulations promulgated thereunder.”

ORG
EIN: EIN

The organization is not organized or operated as a charitable organization described in IRC section 501(c)(3); it is not operated primarily for the benefit of a charitable class and is not organized for exempt purposes. Therefore, we propose to revoke the organization's exempt status under IRC section 501(c)(3) effective August 31, 20XX (the date of the amendments to the organization's Certificate of Incorporation).

CONCLUSION

It is the Service's position that the organization is not organized and operated exclusively for exempt purposes and does not qualify for exemption from federal income tax under IRC section 501(c)(3). Accordingly the organization's exempt status is revoked effective August 31, 20XX.

Form 940 returns (FUTA, Federal Unemployment Tax Returns) should be filed for the tax periods ending on or after August 31, 20XX.